

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

BETTY JO SPEAR,

Plaintiff,

-against-

3:04-CV-1189  
(LEK/DRH)

JO ANNE B. BARNHART, *Commissioner*  
*of Social Security*,

Defendant.

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**DECISION AND ORDER**

This matter comes before the Court following a Report-Recommendation filed on November 1, 2006, by the Honorable David R. Homer, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and L.R. 72.3(d) of the Northern District of New York. Report-Rec. (Dkt. No. 9). After ten days from the service thereof, the Clerk has sent the entire file to the undersigned, including the objections by Plaintiff Spear, which were filed on November 16, 2006, see Objections (Dkt. No. 10), and the response by Defendant Barnhart, filed on December 1, 2006, see Resp. (Dkt. No. 11).

It is the duty of this Court to “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b). “A [district] judge... may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” Id. This Court has considered the objections and has undertaken a de novo review of the record and has determined that the Report-Recommendation should be approved for the reasons stated therein.

Accordingly, it is hereby

**ORDERED**, that the Report-Recommendation (Dkt. No. 9) is **APPROVED** and **ADOPTED** in its **ENTIRETY**; and it is further

**ORDERED**, that the Commissioner's decision denying disability benefits is **AFFIRMED**; and it is further

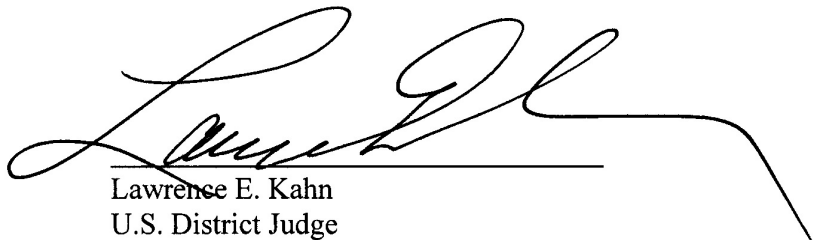
**ORDERED**, that Plaintiff's Motion for a finding of disability (Dkt. No. 5) is **DENIED**; and it is further

**ORDERED**, that Defendant's Cross-Motion (Dkt. No. 8) is **GRANTED**; and it is further

**ORDERED**, that the Clerk serve a copy of this Order on all parties.

**IT IS SO ORDERED.**

DATED: January 23, 2007  
Albany, New York



Lawrence E. Kahn  
U.S. District Judge